

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-184018

MATTER OF:

Mary L. McLain - Leave without Pay

DATE: JUL 21 1976

61165
97899

DIGEST:

Employee took leave in accordance with directive of supervisor who apparently acted on mistaken belief that employee had not received compensation at rate specified in contract and was entitled to paid leave in lieu of additional monetary compensation. Claim is denied since employee had received all compensation to which she was entitled.

This action is a response to an appeal from a settlement of our Transportation and Claims Division (now Claims Division) Z-2548107, March 26, 1975, which disallowed a claim for payment for four days of leave without pay charged to Mrs. Mary L. McLain an employee of the Department of the Army.

The record shows that Mrs. McLain entered into a contract to perform the duties of Vice-Principal at the Tyndall Air Force Base Elementary School, Tyndall Air Force Base, Florida, a so-called Section 6 school, created under the authority of section 6 of Public Law 81-874, 64 Stat. 1107, 20 U.S.C. 241(f). The record also indicates that contracts for fiscal year 1973 were negotiated by Section 6 school employees on two different bases. One group of employees were on a fiscal year contract basis, where the employee's services were required for a total of 260 days. The actual work days were 240 and the remaining 20 days were simply nonworking days. A second group of employees were school-year employees, whose services were required for less than 260 days. Contracts for the second group specified a total number of contract days of which a lesser amount were workdays. In both types of contracts, the salary was stated as an annual amount. Fiscal-year employees received their annual salary for the full 260 days at a daily rate computed by dividing the annual amount by 260. Thus, the fiscal-year employees were to receive 20 days vacation leave for which they would be compensated at the daily rate. On the other hand, the daily rate for the school-year employees was computed by dividing the annual contract amount by the number of actual workdays. The school-year employees were thus paid for workdays

and were given leave without pay for days off. When a school-year employee took vacation leave, his time card was marked leave without pay and his pay was computed accordingly.

In November of 1972, some of the school-year employees were changed from an annual salary to an hourly rate. There was no conversion from the annual salary, but rather, the employee's position was graded to that of a comparable wage-board employee, and the corresponding wage-board level hourly salary was assigned. At that time, new contracts were not negotiated. The employees involved were wage-board employees only for pay computation purposes and did not receive the normal leave privileges of the regular wage-board employees. The school-year employees were paid at the hourly rate for workdays, while continuing to be on leave without pay for nonworkdays.

Since the school-year employees continued to be in a leave without pay status for nonworkdays after the conversion from an annual rate of pay to an hourly rate, their compensation was less after the conversion than before. In response to a claim by a school official that both fiscal year and school year employees were underpaid, a local decision was made to grant leave to those employees in addition to the nonwork days already received. This paid leave was to be considered as compensation in lieu of monetary amounts. Accordingly, both school-year and fiscal-year employees took additional leave as directed by their superior.

The employees compensated on a fiscal-year basis were paid the hourly rate of pay on the nonworking days after the conversion. Therefore, the conversion from an annual rate of pay to an hourly rate of pay had no effect on the amount of compensation for these employees. Since the fiscal-year employees were not underpaid after the conversion, it follows that no additional monetary compensation (or paid leave in lieu of monetary compensation) was due the fiscal year employees. Thus it is clear that, insofar as the fiscal-year employees are concerned, the decision to grant additional paid leave in excess of the amount stated in the contract was clearly erroneous.

In ruling on the claim of Mrs. McLain, we do not find it necessary to reach the issue of the proper method of calculating the amount of compensation due the school-year employees after the conversion to the hourly rate. Although Mrs. McLain was classified as a school-year employee, her compensation was not reduced by the conversion that occurred in November of 1972. Mrs. McLain's contract covered the period July 26, 1972, to June 29, 1973, for a total of 243 days, 230 of which were designated as workdays. The contract provided for an annual salary of \$11,453. The annual salary rate was divided by the number of workdays and the resulting figure (\$49.79) was specified in the contract as the daily rate of pay. The record indicates that Mrs. McLain's rate of pay was not affected by the conversion to the hourly rate of pay in November of 1972. The record shows that Mrs. McLain continued to receive compensation at the rate of \$49.79 per workday throughout the contract period. Since Mrs. McLain's compensation was not changed by conversion of some of the school-year employees to a wage-board rate, it is clear that the administrative determination that Mrs. McLain was entitled to paid vacation leave in excess of the amount authorized by the contract was without a rational basis.

Accordingly, the denial of Mrs. McLain's claim by the Transportation and Claims Division is affirmed.

R. F. Keller

Deputy Comptroller General
of the United States